

In addition to the reasoning stated above, Third Party Claims can only be derivative claims and are limited to the causes of action brought by the Plaintiff against the Defendant/Third Party Plaintiff. Laughlin v. Dell Financial Services, Inc., 465 F. Supp. 2d, 563, 566 (2006 U.S.D.S.C.). Therefore, in this action, MI can only bring causes of action

against Lakes of Summerville for causes of action that the Plaintiff is bringing against MI. *Id.* The Plaintiff has brought causes of action against MI for products liability; Plaintiff has brought a products case. MI has brought causes of action for defective construction services; MI has brought a construction defect case.

South Carolina law states that a general contractor in building a home performs a service. Fields v. Haynes Waters Builders, 376 S.C. 545, 565; 658 S.E.2d 80, 91 (S.C. 2008). The General Contractor in building a home does not sell a product. *Id.* The two causes of action are separate and distinct; one is not derivative of the other. Therefore, since the Plaintiff's claim is for products liability and MI's claim is for construction services, MI cannot, in the same action, bring a Third Party claim against Lakes of Summerville for construction defects. *Id.*

Lakes of Summerville reserves and does not waive the right to adopt other arguments as may be presented.

### **Conclusion**

For the reasons stated herein, the Third Party Complaint alleging causes of action for contribution and equitable indemnity should be dismissed without prejudice.

Date: December 7, 2011

Respectfully submitted,

s/Jeffrey A. Ross  
Jeffrey A. Ross (Fed. ID No. 10540)  
CLAWSON AND STAUBES, LLC  
126 Seven Farms Drive, Suite 200  
Charleston, South Carolina 29492-8144  
TEL: (843) 577-2026  
FAX: (843) 722-2867  
[jross@clawsonandstaubes.com](mailto:jross@clawsonandstaubes.com)